

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Nathan Winshall	Team: Squad #3	CCRB Case #: 201708315	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/17/2017 7:53 PM	Location of Incident: Intersection of Davidson Avenue and W 190th Street		Precinct: 52	18 Mo. SOL 3/17/2019	EO SOL 3/17/2019
Date/Time CV Reported Sun, 09/17/2017 8:39 PM	CV Reported At: Other	How CV Reported: E-mail	Date/Time Received at CCRB Tue, 10/10/2017 11:21 AM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Jose Deleonsanchez	06308	958480	052 PCT
2. POM Ariel Eusebio	19648	958565	052 PCT
3. POM Luilly Lopez	25793	955089	052 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Freddy Guevara	13815	960626	052 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jose Deleonsanchez	Abuse: Police Officer Jose Deleonsanchez frisked § 87(2)(b) [REDACTED]	[REDACTED]
B.POM Ariel Eusebio	Abuse: Police Officer Ariel Eusebio frisked § 87(2)(b) [REDACTED]	[REDACTED]
C.POM Ariel Eusebio	Abuse: Police Officer Ariel Eusebio threatened to issue a summons to § 87(2)(b) [REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g) [REDACTED]	[REDACTED]	[REDACTED]
§ 87(4-b) § 87(2)(g) [REDACTED]	[REDACTED]	[REDACTED]

Case Summary

§ 87(2)(b) filed this complaint with 3-1-1 on September 17, 2017. IAB subsequently contacted § 87(2)(b) on October 3, 2017. This complaint was received by the CCRB on October 10, 2017, via IAB log #2017-38607.

On September 17, 2017, at approximately 7:53 p.m., § 87(2)(b) was stopped by Police Officers Jose Deleon Sanchez and Freddy Guevara at the intersection of West 190th Street and Davidson Avenue in the Bronx for having a broken taillight. Shortly thereafter, Police Officers Ariel Eusebio and Luilly Lopez arrived at the scene to assist PO Deleon Sanchez and PO Guevara with the vehicle stop. § 87(2)(b) was asked to get out of his vehicle and PO Eusebio then patted § 87(2)(b) down (**Allegation A – Abuse of Authority: § 87(2)(g)**; **Allegation B – Abuse of Authority: § 87(2)(g)**). § 87(2)(b) was asked to get into his vehicle and PO Deleon Sanchez then issued him a summons for “no/inadequate lights.” As the officers were leaving, § 87(2)(b) alighted from his vehicle and began yelling at the officers. PO Eusebio responded to § 87(2)(b) by stating that if § 87(2)(b) did not get back into his vehicle and drive away, he would be issued an additional summons for blocking traffic (**Allegation C – Abuse of Authority: § 87(2)(g)**). § 87(4-b) § 87(2)(g)

§ 87(2)(b) provided video footage of the incident which he captured using his cell phone. The videos are attached to IA31 and IA57. The video attached to IA31 occurs chronologically before that which is attached to IA57.

Findings and Recommendations

Allegation (A) Abuse of Authority: Police Officer Jose Deleon Sanchez frisked § 87(2)(b)

Allegation (B) Abuse of Authority: Police Officer Ariel Eusebio frisked § 87(2)(b)

It is undisputed that PO Deleon Sanchez and PO Eusebio approached the driver’s side of § 87(2)(b)’s vehicle and requested that he get out of his vehicle. § 87(2)(b) initially did not comply; however, once he did comply, PO Eusebio patted him down and did not recover anything.

§ 87(2)(b) stated that initially, PO Deleon Sanchez approached the driver’s side of his vehicle and PO Guevara approached the passenger side of his vehicle. § 87(2)(g)

§ 87(2)(b) only spoke to PO Deleon Sanchez, who asked for § 87(2)(b)’s license and registration. § 87(2)(b) provided his license and stated that he did not have his registration. PO Deleon Sanchez and PO Guevara returned to their marked RMP. During this time § 87(2)(b) tried not to look back at PO Guevara and PO Deleon Sanchez’s vehicle because he did not want to make any movements that could be interpreted as suspicious. Nevertheless, § 87(2)(b) did look back briefly and saw that PO Eusebio and PO Lopez had arrived on the scene. PO Eusebio and PO Deleon Sanchez approached the driver’s side of § 87(2)(b)’s vehicle. PO Eusebio then asked § 87(2)(b) to get out of his vehicle and § 87(2)(b) asked PO Eusebio why he needed to get out of his vehicle. PO Eusebio repeated his question and § 87(2)(b) repeatedly asked, “Why?” Eventually § 87(2)(b) got out his vehicle and PO Eusebio patted down § 87(2)(b)

“from the top of [his] shoulders, to [his] feet,” and “moved § 87(2)(b) s] shorts.” § 87(2)(b) who was wearing shorts at the time, could not recall if PO Eusebio patted down his bare legs.

§ 87(2)(b) and § 87(2)(b) were not present for this portion of the incident (Board Review 01 and Board Review 02).

PO Eusebio stated that he arrived at the scene while PO Deleon Sanchez was initially at § 87(2)(b) s window. PO Eusebio did not recall if PO Guevara or PO Deleon Sanchez provided him with any information as to what was happening with respect to the vehicle stop. § 87(2)(b) was not reaching around his vehicle during this initial encounter. The officers then returned to PO Deleon Sanchez and PO Guevara’s vehicle. There, PO Eusebio observed § 87(2)(b) reaching around the front of his vehicle. In his sworn CCRB statement, PO Eusebio initially stated § 87(2)(b) was reaching around his seat although he could not specify where he was reaching. Later in his statement, PO Eusebio stated § 87(2)(b) was searching around and under his seat. Even later in the interview, PO Eusebio specified that § 87(2)(b) was searching around his seat and under his seat; however, even later in the interview PO Eusebio stated that he could not see exactly where § 87(2)(b) s hand went. PO Eusebio observed § 87(2)(b) lean down and “put his hand around the car.” PO Eusebio also observed § 87(2)(b) reach around his center console. PO Eusebio did not recall if the center console was open or closed. PO Eusebio did not recall § 87(2)(b) opening any compartments within his vehicle. Later in the interview, PO Eusebio stated that he saw § 87(2)(b) reaching around the entirety of the front of his vehicle. § 87(2)(b) was specifically reaching with his right hand. PO Eusebio did not recall § 87(2)(b) reaching with his left hand. PO Eusebio was approximately five feet away from § 87(2)(b) PO Eusebio did not recall if § 87(2)(b) made any movements towards himself. At this point, PO Eusebio became concerned for his own safety as well as § 87(2)(b) s safety as he feared that § 87(2)(b) may have been searching for a weapon. PO Eusebio did not fear for his safety for any other reason than § 87(2)(b) s reaching around his vehicle. PO Eusebio then informed PO Deleon Sanchez that he did not feel safe and the two officers agreed that § 87(2)(b) should be patted down. PO Eusebio then asked § 87(2)(b) to step out of his vehicle and § 87(2)(b) asked why. PO Eusebio explained he was being asked to step out of his vehicle for the officer’s safety and § 87(2)(b) then complied. PO Eusebio did not notice any bulges on § 87(2)(b) PO Eusebio then patted § 87(2)(b) s chest, waist, legs, and ankles, as he typically does when he pats individuals down. He did not recall what § 87(2)(b) was wearing.

PO Deleon Sanchez was consistent with PO Eusebio about when PO Eusebio arrived. PO Deleon Sanchez requested § 87(2)(b) s license, registration, and insurance. In his sworn CCRB statement, PO Deleon Sanchez initially stated that § 87(2)(b) was calm at this point; however, he later stated that § 87(2)(b) appeared nervous. § 87(2)(b) provided his license but did not provide his registration or insurance. PO Deleon Sanchez asked § 87(2)(b) for his registration again and § 87(2)(b) explained that he did not have it on him and then asked PO Deleon Sanchez if he could look around his vehicle for his registration and suggested that it might be in his glove compartment. § 87(2)(b) then began to reach everywhere in his vehicle, including under his seat, in the visor, and in his glove compartment. PO Deleon Sanchez told § 87(2)(b) that “it was okay.” The officers then returned to PO Deleon Sanchez and PO Guevara’s vehicle and PO Deleon Sanchez and PO Eusebio spoke to one another and agreed that specifically because § 87(2)(b) had reached under his seat, they wanted to take him out of his vehicle. Nothing contributed to this decision other than the fact that § 87(2)(b) was reaching around his vehicle and appeared nervous. After § 87(2)(b) refused to get out of his vehicle twice, he eventually complied. There was no reason that they asked § 87(2)(b) to step out of his vehicle at

this point and not when they were first interacting with him. PO Deleon Sanchez did not notice any bulges on § 87(2)(b)'s person at this point. PO Eusebio patted down § 87(2)(b)'s waist, his chest, and the outside of § 87(2)(b)'s thighs. PO Deleon Sanchez did not remember if PO Eusebio patted down § 87(2)(b)'s calves. PO Deleon Sanchez did not remember what § 87(2)(b) was wearing at the time.

PO Guevara stated that when asked for his license and registration, § 87(2)(b) looked in his glove compartment. PO Guevara could not tell if § 87(2)(b) looked anywhere else in his vehicle. PO Guevara and PO Deleon Sanchez then returned to their vehicle at which point PO Eusebio and PO Lopez arrived on scene. PO Guevara tried to give PO Eusebio and PO Lopez a thumbs up to indicate that he and PO Deleon Sanchez did not need assistance but PO Eusebio and PO Lopez did not see his thumbs up. PO Guevara was not involved in the decision to take § 87(2)(b) out of his vehicle. After being asked to get out his vehicle, § 87(2)(b) complied and PO Eusebio patted him down. PO Guevara could not see where § 87(2)(b) was being patted down as § 87(2)(b)'s vehicle obstructed PO Guevara's vision. Nevertheless, PO Guevara knew that PO Eusebio was patting down § 87(2)(b) because PO Eusebio was standing behind § 87(2)(b).

PO Lopez stated that when he and PO Eusebio arrived, § 87(2)(b) was agitated and was "fidgeting" in his car. PO Lopez elaborated that § 87(2)(b) began to make furtive movements, including reaching to the sides of his seat. PO Lopez could not see if § 87(2)(b) reached under his seat. PO Lopez did not remember § 87(2)(b) move his hands anywhere else in the vehicle. PO Lopez believed that PO Eusebio asked § 87(2)(b) to stop moving around. PO Lopez did not remember how many times PO Eusebio asked § 87(2)(b) to stop moving around, although it was no more than two times. Approximately 30 seconds after § 87(2)(b) made these movements, PO Eusebio told § 87(2)(b) to get out of his vehicle. PO Lopez's vision was partially impaired by § 87(2)(b)'s vehicle although he could see PO Eusebio make physical contact with § 87(2)(b). PO Lopez could not see from § 87(2)(b)'s thighs downward. PO Eusebio patted down § 87(2)(b)'s pants pockets and his "waistband" area. PO Lopez did not see any bulges on § 87(2)(b). PO Lopez did not see anything that was indicative of a weapon on § 87(2)(b)'s person.

According to *People v Muniz*, "fidgeting, leaning over, moving [one's] torso and arms, and [appearing] preoccupied with something in [a vehicle] ... are insufficient to authorize officers to perform a pat down" *People v Muniz*, 12 A.D.3d 937 (Board Review 03).

§ 87(2)(g)

[REDACTED]

Allegation (C) Abuse of Authority: Police Officer Ariel Eusebio threatened to issue a summons to § 87(2)(b)

§ 87(2)(b) stated that after he was issued a summons, he got out of his car and began yelling at PO Eusebio, asking him approximately seven times, “Why did you search me?” In his phone statement, § 87(2)(b) stated that PO Eusebio responded, “Do you want to get a fucking ticket for blocking the street?” However, in his sworn CCRB statement, § 87(2)(b) stated that he was not absolutely certain that PO Eusebio swore at him, and thus did not want to put that statement on the record § 87(2)(g)

Nevertheless, § 87(2)(b) maintained in his sworn statement that PO Eusebio threatened to issue him an additional summons if § 87(2)(b) did not get back into his vehicle and drive away, citing the fact that § 87(2)(b) was blocking traffic.

§ 87(2)(b) the mother of § 87(2)(b) s son, stated that she was approaching the location in her vehicle in order to pick up her son. She had been watching portions of the Facebook Live video that § 87(2)(b) had been streaming, prior to arriving at the scene. § 87(2)(b) stopped at a traffic light to yell at § 87(2)(b) to try to calm him down. § 87(2)(b) got out of his vehicle and began expressing his frustration to the officers and told them he was going to file a complaint. The officers did not respond to § 87(2)(b) (Board Review 02).

§ 87(2)(b) § 87(2)(b) s boyfriend, stated that he was in the vehicle with § 87(2)(b) and that they approached the scene of the incident towards the end of § 87(2)(b) s encounter with the officers. § 87(2)(b) had informed § 87(2)(b) what had been happening on the Facebook Live video while they were driving to the scene of the incident. When they arrived, § 87(2)(b) was speaking to an officer after receiving a summons but the officer did not respond. § 87(2)(b) did not hear an officer threaten § 87(2)(b) with an additional summons (Board Review 01).

PO Eusebio stated that he did not interact with § 87(2)(b) after patting him down and did not threaten to issue § 87(2)(b) a summons.

PO Deleon Sanchez stated after he issued § 87(2)(b) a summons and was returning to his vehicle, § 87(2)(b) got out of his vehicle and began to “scream obscenities” at the officers. PO Deleon Sanchez did not remember exactly what § 87(2)(b) was saying. No officer responded to § 87(2)(b) PO Deleon Sanchez did not remember if PO Eusebio threatened to issue § 87(2)(b) a summons.

PO Guevara stated that after PO Deleon Sanchez issued the summons to § 87(2)(b) the officers got into their vehicle and left without any further interaction with § 87(2)(b)

PO Lopez stated that PO Eusebio did not interact with § 87(2)(b) once § 87(2)(b) had been patted down and allowed back into his vehicle. PO Lopez did not recall PO Eusebio threatening to issue § 87(2)(b) a summons.

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§ 87(4-b) § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 07).
- PO Eusebio has been a member of service for two years and has been a subject in two CCRB complaints and 12 allegations, none of which were substantiated. § 87(2)(g)
- PO Lopez has been a member of service for four years and has been a subject in one CCRB complaint and one allegation, which was not substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- § 87(2)(b) declined to mediate this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- As of March 6, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 09).

Squad No.: 3

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date